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MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of The United States

OCTOBER TERM, 1979

No. 79-421

JOHN M. BRYANT, et al.,
Petitioners,

vs.

BEN YELLEN, et al.,
Respondents.

REPLY BRIEF OF BRYANT PETITIONERS IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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MEMORANDUM

TO: The Honorable Chief Justice and Associate Justices of the United States Supreme Court; and

Counsel for California Brewers and International Brotherhood of Teamsters

FROM: James Wolpman and Michael P. Goldstein, counsel for Abram Bryant

RE: **Corrections in Respondent Bryant's brief in No. 78-1548**

We regret that there are a number of printing errors in the brief which we submitted. Some will cause the reader little difficulty, but four should be corrected to avoid confusion:

p. 8, blank space mid-page--insert:

cation of seniority

p. 46, last line before indented quotation--change as follows:

~~future~~ nature of the purported seniority system,

p. 50, line 8--change as follows:

can be calculated in a smaller unit than ~~plantwise~~ plantwide

p. 52, line 6--change as follows:

§703(h) ~~inapplicable~~ applicable. Two other cases cited by the Union

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Four specific questions are presented in the Imperial Valley farmers' Petition for Certiorari. (Bryant Petition, pp. 2-3.) For the most part, respondents' Memorandum in Opposition simply ignores those questions[1]. It does raise

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1. For example, the landowners' petition shows that the Court of Appeals' nullified the final judgment in *Hewes v. All Persons,* thus usurping state jurisdiction to settle the rights of all parties, once and for all, at the inception of the All-American Canal Contract. This state jurisdiction is intended *by federal law* to be used and respected in the reclamation scheme of things. The Court of Appeals' failure to accord that respect repudiates the rules laid down by this *Court in California v. United States,* 438 U.S. 645 (1978). Respondents' memorandum does not even mention *Hewes v. All Persons.* It does cite *California v. United States,* but in doing so, it, first, creates, and then, addresses a question not raised in any of the petitions for certiorari. [footnote continues on next page]

"new material" however, and this in a misleading fashion. Rule 24 (4-5). Specifically, the Opposition Memorandum implies that Congress is on the verge of mooting this case by enacting legislation to reverse the effect of the Ninth Circuit's decision. (Opposition Memo pp. 14-16.) While legislation is pending, it does not in any way moot the crucial *legal* issues raised in the landowners' petition.[2]

The currently-pending bill to which the Opposition Memorandum apparently intends to refer does not, as perhaps suggested, deal principally with Imperial Valley. It entails a significant reconsideration of many provisions of the reclamation program. S. 14[3]

Although S. 14 has passed the Senate, the House has not acted on it, or any similar proposal. On November 13, 1979, the Chairman of the House Interior Committee, Congressman Udall, stated publicly that, in his opinion, S. 14 or similar legislation would not be likely to pass in the House during this session of Congress.[4]

In view of respondents' position, it is perhaps noteworthy that Administration representatives have urged that Congress should not act with reference to the equities in Imperial Valley on the ground that it would be desirable to have the matter settled in this Court. Thus, at the Senate hearings on S. 14 and other bills, Secretary of the Interior Andrus stated:

> "I hope the Court will speak to this Senator and we can get it resolved once and for all."[5]

There are strong equities and public interests in favor of legislative action to reverse the decision below if it is left standing. Nevertheless, Congress is occupied with many subjects, and the legislative process is uncertain. Clearly it is not likely that legislation will in any way moot the practical effect of the Ninth Circuit's decision during this session of Congress. Further, even if corrective legislation is obtained at some future date, that legislation would not correct the serious distortions of federal law and practice sponsored by the opinion below.

For these reasons, and for the reasons expressed in the Petition for Writ of Certiorari filed by the landowner parties, petitioners again pray that a Writ of Certiorari issue to review the judgment and opinion of the Ninth Circuit in this important case.

November 16, 1979

Respectfully submitted,
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Of Counsel:
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[footnote 1, continued]

The petition shows that the decision below mandates an abrogation of this Court's mandate in *Arizona v. California*. The memorandum does not answer that question, it simply asserts that "neither Secretary Wilbur nor Executive Assistant Ely considered 'present perfected rights' to be relevant. Since the documents referred to predate *Arizona v. California* by four decades, they can have no bearing on the fundamental issue raised in its petition.

Similarly, the petition shows that the Ninth Circuit's decision is internally contradictory on the issue of standing, and that it flatly contradicts this Court's holding in *Warth v. Seldin*, 422 U.S. 490 (1970). The Memorandum in Opposition does not deign to mention standing.

2. It is noteworthy that respondent cites a bill introduced in 1978, not the currently-pending bills. (Opposition Memo. pp. 15-16.)

3. S. 14 is one of more than a dozen bills in the hopper which deal, in one way or another, with land — limitation provisions of the reclamation law. S. 14 is the only one which has made significant progress in Congress, having passed the Senate.

H.R. 2994 deals only with Imperial Valley, but no action has been taken on this bill.

4. Los Angeles *Times*, November 14, 1979, Pt. I, p. 26, col. 4.

5. *Proposed Reclamation Reform Act of 1979:* Hearings on S. 14, S. 386, S. 633, S. 654, S. 672, S. 718 and S. 735, Subcomm on Energy Research and Development, Sen. Comm on Energy and Natural Resources, 96th Cong. 1st Sess. P. 277 (1979).

At the House hearings on November 13, Secretary Andrus repeated these sentiments, suggesting that this Court is the best place to resolve the issue and not the legislature. See, *Hearings on Reclamation Reform*, Subcomm on Water and Power Resources, House Comm on Irrigation and Insular Affairs, 96th Cong., 1st Sess., pp. 25, 55 (Unofficial Tr., 1979). [The official transcript of these hearings is not yet available. The transcript cited is subject to editorial revision].